

Exhibit 10

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Dey, Inc., et al.,
Civil Action No. 05-11084-PBS

Exhibit to the Memorandum In Support of United States' Motion To Exclude Certain Opinions
of W. David Bradford, PH.D

Chapman, Allen D. - December 15, 2008 10:06:00 a.m.

1:1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 -----X

4 In Re: PHARMACEUTICAL INDUSTRY)

5 AVERAGE WHOLESALE PRICE LITIGATION)

6 -----X MDL No. 1456

7 THIS DOCUMENT RELATES TO:) Master File No.

8 United States of America ex rel.) 01-CV-12257-PBS

9 Ven-A-Care of the Florida Keys,) Subcategory Case

10 Inc., et al. v. Dey, Inc., et al.,) No. 06-11337

11 Civil Action No. 05-11084-PBS) Hon. Patti B.

12 -----X Saris

13

14 VIDEOTAPED DEPOSITION OF: ALLEN D. CHAPMAN

15 December 15, 2008

16 PURSUANT TO AMENDED NOTICE AND SUBPOENA,

17 the deposition of ALLEN D. CHAPMAN was taken on

18 behalf of Defendant Dey, Inc., at 1701 California

19 Street, Silverton Room, Denver, Colorado 80202, on

20 December 15, 2008, at 10:06 a.m., before Tammie E.

21 Singer, Professional Court Reporter and Notary

22 Public within Colorado.

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307:1 Q. I understand. Let me see if this will
2 more specifically refresh your memory.

3 A. Okay.

4 (Deposition Exhibit Chapman 003
5 was marked.)

6 Q. What I've marked as Chapman Exhibit 3,
7 sir, is a copy of a federal regulation.

8 Specifically it's a Section 447.301 of Title 42.

9 A. Right.

10 Q. I'm going to direct your attention to
11 that definition there listed for estimated
12 acquisition cost, and I'll read it for the
13 record.

14 "Estimated acquisition cost means the
15 agency's best estimate of the price generally and
16 currently paid by providers for a drug marketed
17 or sold by a particular manufacturer or labeler
18 in the package size of drug most frequently
19 purchased by providers." Did I read that
20 correctly --

21 A. Yes.

22 Q. -- other than getting a little tongue-

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308:1 tied there?

2 Do you agree that that definition
3 comports with your understanding of how the
4 federal government has defined estimated
5 acquisition cost over the years?

6 A. I remember reading the 42 CFR when I
7 first got there. And I --

8 Q. And --

9 A. And I remember it, you know, being --
10 and this was basically what we would use when we
11 would do our state plan, is that it would have to
12 be in compliance with that. But yes, I would
13 agree with that.

14 Q. Well, thank you. That was going to be
15 my next --

16 A. Yeah.

17 Q. -- question. Did Colorado Medicaid try
18 to follow the def -- the federal definition of
19 estimated acquisition cost?

20 A. Yes.

21 Q. And to your knowledge, over the years
22 in implementing different reimbursement

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309:1 methodologies, did Colorado Medicaid try to
2 achieve estimated acquisition cost as defined in
3 federal regulation?

4 MR. KATZ: Objection to the form.

5 A. I don't know much about that last piece
6 that we've been talking about, those 2002 ones
7 where I was not --

8 Q. (BY MR. ANDERSON) I --

9 A. Okay.

10 Q. I understand. Limiting to --

11 A. Limiting to the ones --

12 Q. -- your experience --

13 A. Limiting to the ones that I had -- I
14 had contact with and I think that we all worked
15 with this, and this was essentially part of that
16 federal review that, you know, when -- that
17 period of time between when the state submitted
18 something and the Fed people looked at that is
19 that they looked at this state plan amendment and
20 made sure it met with that or it would not get
21 approved.

22 Q. And that was -- at least as you

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310:1 understood it during your tenure at Colorado
2 Medicaid from 1990 through a portion of '95 and
3 then 1996 through a portion of 2002 --

4 A. Correct.

5 Q. -- that was the -- your experience?

6 A. Right.

7 MR. KATZ: Objection to form.

8 Q. (BY MR. ANDERSON) Is that right, sir?

9 A. That's right.

10 MR. KATZ: Objection to form.

11 Q. (BY MR. ANDERSON) And so as far as you
12 knew, the conduct and actions of Colorado
13 Medicaid were consistent with the federal mandate
14 concerning the definition of estimated
15 acquisition cost?

16 A. That's right.

17 MR. KATZ: Objection to the form.

18 Q. (BY MR. ANDERSON) Okay. Now I'm going
19 to have some additional big-picture questions for
20 you. Is there any way that Colorado Medicaid
21 could have manually processed pharmacy
22 reimbursement claims?